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Chapter 9 Counsel

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,

Debtor.

Tax ID #: 94-6002897
Address: 869 N. Cherry St.
Tulare, CA 93274

CASE NO. 17-13797

Chapter 9

Date: August 15, 2018
Time: 1:30 p.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

THIRD CHAPTER 9 STATUS REPORT

TO THE HONORABLE RENE LASTRETO, UNITED STATES BANKRUPTCY JUDGE:

Tulare Local Healthcare District, dba Tulare Regional Medical Center ("District"), respectfully comes before the Court and submits this Second Chapter 9 Status Report as follows:

I.
BACKGROUND

The District filed a Chapter 9 Petition on September 30, 2017 in the face of a threatened shutdown of the hospital by the District's former management and due to very dire financial circumstances.

The District is a public entity organized under the California Local Healthcare District Law and consists of a geographic district located in Western Tulare County

1 where the District is the only provider of acute healthcare services for over 80,000
2 people. The District is governed by an elected board of five persons representing
3 specific districts.

4 The Court has set a third Chapter 9 Status Conference for August 15, 2018 at
5 1:30 p.m. so as to be informed as to the status of this case and the progress toward a
6 plan.

7 The purpose of this report is to provide the Court with a report on activities that
8 have occurred since the first Status Conference as well as to inform the Court as to
9 expected activities that will occur in the next phase of this Chapter 9 case.

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11 **II.**
ELIGIBILITY

12 The Court previously fixed a bar date of January 11, 2018 for objections to
13 eligibility based on the District's Motion for an Entry of Order (1) Directing and
14 Approving Form of Notice of Commencement;(2) Setting Deadline for Filing Objections
15 to Petition; and (3) for Relief Under Chapter 9 (ECF No. 169).

16 No objections to eligibility were filed. The order for relief was entered on January
17 26, 2018. Appropriate notices were given.

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19 **III.**
CLAIMS BAR DATE

20 The District filed and served its Motion for Order Fixing Bar Date for Filing Proofs
21 of Claim (ECF No. 290). A bar date of April 10, 2018 was entered and notice was given
22 to all creditors. The District is in the process of evaluating all claims. The District will
23 file such objections as necessary at some point in the future, likely after plan
24 confirmation.

25 **IV.**
POST PETITION ACTIVITIES THROUGH JANUARY 5, 2018

26 The District engaged in and/or accomplished the following between October 1,
27 2017 and January 5, 2018. These activities are not set out in order of importance or
28 chronology. These are highlights of such activities for said period:

- 1 • The District sought and obtained an Order rejecting the executory contract of
2 Health Care Conglomerate Associates, LLC ("HCCA"). The rejection of the
3 HCCA contract was effective at 5:00 p.m. on November 22, 2017. Beginning the
4 week following the Thanksgiving holiday the District regained control over various
5 bank accounts.
- 6 • Beginning November 23, 2017 the District sought and obtained control over what
7 it believes to be most of the assets and records of the District except for some
8 assets that are unaccounted for, some assets that are in the possession of
9 Southern Inyo Healthcare District, and some records believed to be in the
10 possession of the Tulare County District Attorney's Office obtained by search
11 warrants.
- 12 • The District entered into agreements with Wipfli/HFS to provide management
13 services to the District including a CEO, CFO, CAO, Project Manager and other
14 key management personnel. The management team is headed by Richard
15 Gianello and reports to the elected board of directors.
- 16 • The District voluntarily and temporarily surrendered its license to the California
17 Department of Public Health.
- 18 • The District regained the ability to hire a skeleton crew of employees who are
19 now directly employed by the District.
- 20 • The District secured control over its facilities.
- 21 • The District entered into a stipulation for the assumption of its various insurance
22 contracts with BETA, a joint powers authority, for insurances, and Phoenix Health
23 Systems regarding IT services, among others.
- 24 • The District commenced the process of evaluating about 1,100 contractual
25 arrangements to determine which of these agreements should be assumed and
26 which should be rejected.

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- 1 • The District commenced the process of filing Motions to Reject Contracts and
- 2 Motions to Assume Contracts and NRRP as well as negotiation of new post-
- 3 petition agreements.
- 4 • The District, upon gaining control over electronic files, filed an amended list of
- 5 creditors and obtained an Order prescribing notice to a limited sub-set of
- 6 creditors.
- 7 • The District obtained an Order setting a hearing on its eligibility for relief under
- 8 Chapter 9. Pursuant to that Order the District has given notice to all persons on
- 9 its list of creditors and the District has published notice in Bond Buyer and the
- 10 Visalia Times Delta. The last date to object to eligibility was January 11, 2018
- 11 and there were no objections to eligibility.
- 12 • The District obtained numerous Orders pursuant to FRBP 2004. The District is
- 13 seeking documents by subpoena prior to conducting examinations.
- 14 • Post-petition the District learned that the prior management company entered
- 15 into an agreement and purported to sell assets of the District to Celtic Leasing for
- 16 \$3 million.
- 17 • The District obtained a claims bar date and has commenced evaluation of all
- 18 claims.
- 19 • The District commenced discussions with Wilmington Trust as the indenture
- 20 trustee for the District's revenue bonds.
- 21 • The District figured out which lawsuits were pending either by or against the
- 22 District in a variety of different courts.
- 23 • The District gained an understanding of the then pending 14 medical malpractice
- 24 suits and established open lines of communication with defense counsel.
- 25 • The District commenced discussions with lenders to obtain credit sufficient to
- 26 enable the District to reopen the hospital and medical clinics to resume providing
- 27 services to the people of the District.

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- 1 • The District had discussions with the California Department of Public Health
- 2 regarding steps necessary for the reopening of the hospital and clinics.
- 3 • The District evaluated its involvement in several civil, non-medical malpractice
- 4 lawsuits pending in Federal and State Courts.
- 5 • The Court appointed a healthcare ombudsman and there have been discussions
- 6 between the District and the ombudsman.
- 7 • The District has joined State Senator Jean Fuller in a request for a state audit as
- 8 to the uses and misuses of bond funds since 2009.

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10 **V.**
POST PETITION ACTIVITIES FOR
JANUARY 6, 2018 TO JUNE 11, 2018

11 The District has continued to engage in many of the activities described above at
12 Section IV and a further report on activities since January 5, 2018 is as follows:

- 13 • The District engaged in intensive mediation efforts with HCCA to resolve disputes
- 14 between them. The mediation efforts were not successful. The District
- 15 commenced an adversary proceeding against HCCA as is discussed in Section
- 16 VIII of this Status Report. See Section VIII for a discussion of related litigation.
- 17 • The District has been engaged in discussions with various healthcare systems
- 18 concerning such things as management agreements, affiliation agreements and
- 19 leases. In recent days the District has sent out requests for proposals. The
- 20 District received expressions of interest by June 5, 2018. The District is
- 21 optimistic that the RFP process will lead to the selection of a "partner" and this
- 22 will, in turn, lead to a re-opening of the hospital by August 31, 2018 with voter
- 23 approval of a long term lease expected at the November, 2018 election. This
- 24 arrangement is also expected provide the District with adequate financing with
- 25 which to jump start the re-opening of the hospital.
- 26 • In addition to the above described RFP process, the District is also pursuing
- 27 alternative and additional sources of financing.

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- 1 • The District is spending significant amounts of time seeking to recover on special
2 revenues that are in jeopardy due to the failure of prior management to file
3 various reports and cost reports with federal and state agencies.
- 4 • The District is spending significant amounts of time cooperating with the State
5 Auditor concerning an audit of the uses and misuses of bond proceeds.
- 6 • The District has successfully resolved several medical malpractice lawsuits and
7 has also resolved certain of the civil lawsuits.
- 8 • The District has resolved the lawsuit brought by Senovia Gutierrez for damages
9 caused by the failure to honor her election as a director.
- 10 • The District has resolved a lawsuit brought by the former Medical Executive
11 Committee who sued the District and others for interfering with its duties and
12 responsibilities.
- 13 • The District has continued on with the evaluation of the approximately 1,100
14 contracts and leases.
- 15 • A Creditors' Committee has been appointed in this case. The District has
16 informed the Committee that it will not pay for Committee counsel.
- 17 • The District has evaluated and identified certain excess equipment and assets
18 and has commenced a sale of assets utilizing valuation experts in compliance
19 with the District Court.
- 20 • The District has continued its discussions with the California Department of
21 Public Health, and other state and federal agencies, concerning the terms and
22 conditions on which the District will be able to re-open its hospital and clinics.
- 23 • The District is evaluating the changed rules and regulations relating to the
24 operation of a rural health clinics.
- 25 • The District removed the Los Angeles County Superior Court lawsuit filed against
26 it by HCCA to the U.S. Bankruptcy Court.
- 27 • The District commenced an adversary proceeding against HCCA seeking to
28 invalidate the deed of trust recorded against the Evolutions facility.

- 1 • The District has filed an adversary proceeding against NB Financial and Celtic
2 Leasing concerning what the District considers to be an unauthorized sale and
3 lease back of the District's assets and the deposit of funds into a bank account
4 under the control of the principal of HCCA.
- 5 • The District has commenced discovery relative to Tulare Asset Management,
6 LLC, a company owned and controlled by Dr. Bennie Benzeevi, which owned
7 and controlled a non-District bank account into which sale proceeds stemming
8 from the sale of the District's assets were deposited.
- 9 • The District has commenced efforts to recover financial information from the
10 bank into which Tulare Asset Management deposited monies belonging to the
11 District.
- 12 • The District is in the midst of attempting to resolve the treatment and allowance
13 of its claims against Southern Inyo Healthcare District.
- 14 • The District is engaged in discussions with the trustee for the revenue bonds
15 concerning uses of bond reserves to maintain payments to the revenue
16 bondholders.
- 17 • The District is continuing in its cooperation with various federal and state
18 regulatory and investigatory agencies relative to pre-petition conduct by the prior
19 board of directors and prior manager.
- 20 • The District is engaged in numerous negotiations with parties to contracts, leases
21 and vendors.
- 22 • The District is obtaining a valuation of certain of its real property.
- 23 • The district is preparing to obtain a fair market valuation of a potential lease.
- 24 • The District is preparing to submit a ballot proposition for the November General
25 Election.
- 26 • The District is engaged in ongoing discussions with Earlimart Unified School
27 District, the County of Tulare and Heiskell Ranches concerning either
28 modifications of leases or extensions of new leases of certain facilities.

- 1 • The District is engaged in evaluating its claims for legal malpractice against prior
- 2 attorneys.
- 3 • The Debtor has filed three adversary proceedings seeking to quiet title to certain
- 4 real property belonging to the District.

5 VI.
6 **POST PETITION ACTIVITIES FOR JUNE 12 – AUGUST 3, 2018**

7 The District has continued to engage in many of the activities described above at
8 Sections IV and V, and a further report on activities since June 11, 2018 is as follows.

9 A very considerable amount of time was spent negotiating and documenting the
10 Adventist Health transaction that was approved on August 2, 2018 with a final hearing
11 to be held on August 7, 2018.

12 Time was spent on the litigation involving HCCA. There are no less than eight
13 motions set to be heard by the court on August 15, 2018.

14 Time was spent engaged in settlement discussions with HCCA. A tentative
15 settlement was reached on August 1, 2018.

16 Preliminary work on the litigation involving MB Financial/Celtic Leasing.

17 Much time was spent working on financing related activities. A lot of time has
18 been spent during the subject period with the review and evaluation of executory
19 contracts and leases.

20 The District has been involved in ongoing discussions with the California
21 Department of Public Health, and other federal and state agencies, concerning the
22 terms and conditions on which the hospital will be able to re-open.

23 Much time was spent dealing with revenue bond related issues.

24 Time was spent obtaining valuations of the District's assets.

25 Time was spent working on the ballot proposition for the November 6 election.

26 Time was spent working on inventories of assets of the District.

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VII.
PROFESSIONALS

The District is represented by the McCormick Barstow firm as district counsel and by Walter Wilhelm Law Group as Chapter 9 counsel. The District has engaged bond counsel to advise it with respect to the revenue bonds and general obligation bonds. The District has engaged a malpractice specialist to commence certain actions for recovery of damages. The District has resumed working with pre-petition defense counsel provided by BETA on the pending malpractice actions. Work is underway on the non med-mal civil actions.

VIII.
SOUTHERN INYO HEALTH CARE DISTRICT

The District has filed a Cost of Administration Claim in the Southern Inyo Health Care District ("SIHCD") Chapter 9 case pending before the Honorable Fredrick E. Clement seeking recovery for assets and monies transferred to SIHCD by the prior manager of both Districts. At present, the Districts are discussing a resolution of this issue by fixing and allowing TRMC a general unsecured claim because administrative claims in Chapter 9 are very limited. The District anticipates that it will be involved in the confirmation process involving the Plan of Adjustment proposed by SIHCD.

IX.
HEALTH CARE CONGLOMERATE ASSOCIATES, LLC

Unless settled, the District anticipates that much of the activity in the next phase of this Chapter 9 case will involve litigation among the District, Healthcare Conglomerate Associates, LLC, and its principals. Pre-petition HCCA filed a lawsuit against the District in the Los Angeles Superior Court. That action has been removed to the Bankruptcy Court. HCCA has filed a Motion to Remand. By a separate adversary proceeding, the District has sued HCCA seeking to avoid the deed of trust filed by HCCA only days before the petition date. The adversary proceeding has been filed and served. The District has pending a motion seeking declaratory judgment as to the invalidity of the deed of trust on Evolutions.

X.
MB FINANCIAL / CELTIC LEASING

This adversary proceeding is in the early phase of discovery. The District has pending a valuation of the personal property claimed by Celtic Leasing.

XI.
NEXT PHASE

So that the Court might have a "road map" as to the next phase in this Chapter 9 case, the following items are expected to be commenced or considered over the next four months.

- Upon being authorized to borrow or lease, the District will reopen the hospital and clinics by October 15, 2018.
- The District will file one or more legal malpractice lawsuits seeking recovery of significant damages.
- The District will continue with its evaluation of contracts to determine the appropriate treatment of contracts and unexpired leases.
- The District will be involved in the Chapter 9 confirmation of the plan involving SIHCD.
- The District will be seeking orders authorizing two or more borrowings to provide funding to reopen the hospital and clinics.
- The District anticipates that it will settle one or more of the pending civil and non-medical malpractice lawsuits.
- The District anticipates settling all the litigation involving HCCA.
- The District will continue with the assembly of information to enable it to evaluate bringing avoidance claims under Sections 547, 548 and 549.
- The District will continue its work on a Plan of Adjustment.
- Substantial work related to the November 6, 2018 election.

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XII.
PLAN OF ADJUSTMENT

The District has commenced modeling financial projections relating to its Plan of Adjustment. While still at an early stage in this Chapter 9 case, preliminary indications are that the District, once reopened, and once a "normal" census is achieved, the District will be able to commence drafting a Chapter 9 Plan of Adjustment to provide for some level of payment of creditor claims over a long term period of time.

The overriding objective and concern of the District is to reopen the hospital so it can serve the healthcare needs of the community. The District is the only acute care facility for many miles around Tulare. The closure of the hospital has created great pressure due to the flu epidemic and the impact on area hospitals having to pick up the slack.

At the present time the District anticipates being able to file a Plan in February 2019, once the lease to Adventist is effective.

XIII.
FURTHER STATUS CONFERENCE

The District suggests to the Court that it would be appropriate to set a further Chapter 9 Status Conference around January 7, 2019 so that the District can make a further report to the Court on its reorganization and progress toward a Plan of Adjustment and report back as to the status of the lease to Adventist Health.

XIV.
CONCLUSION

WHEREFORE, Tulare Local Healthcare District prays that the Court be apprised accordingly and seeks such relief as is just and proper.

Dated: August 6, 2018

WALTER WILHELM LAW GROUP,
a Professional Corporation

By:

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Riley C. Walter, Attorneys for Debtor,
Tulare Local Healthcare District, dba
Tulare Regional Medical Center